

CAMBA Legal Services

State Fiscal Year 2020

Joint Hearing on the Crisis Facing Brooklyn Homeowners

PRESENTED BEFORE:

THE NEW YORK STATE LEGISLATURE
COMMITTEES ON JUDICIARY, CITIES, ENERGY & TELECOMMUNICATIONS,
REVENUE AND BUDGET, AND REGULATED MORTGAGE LENDERS

MARCH 15, 2019

Good afternoon:

My name is Patrick T. Pyronneau. I am the supervising attorney of the Foreclosure Prevention Program at CAMBA Legal Services. I am grateful for the opportunity to testify about this important matter. We would like to take this opportunity to thank our elected officials in the New York State Senate and Assembly for their support of the Foreclosure Prevention Programs in this year's budget process. You are true partners in our work to preserve communities and homeownership across the State.

CAMBA is a non-profit agency that provides a wide array of services to over 45,000 individuals and families across the five boroughs. For over 40 years, we have been connecting people with opportunities to enhance their quality of life.

Our legal services division is comprised of 60 staff and more than 30 lawyers who provide legal assistance in the areas of foreclosure prevention, consumer law, services to victims of crime including domestic violence, housing, immigration, legal services for the working poor and benefits advocacy to almost 4,000 clients on an annual basis.

The foreclosure prevention unit was developed in 2008 in response to the foreclosure crisis to assist homeowners who were facing mortgage related distress by providing access to competent housing counselors to help them keep their homes. The following year, the program expanded to incorporate legal representation as part of our service to homeowners in Kings County.

At the inception of the crisis, the typical defendant in a foreclosure action had obtained a subprime mortgage. There were a number of bad actors, including the banks. Some of the predatory practices that they engaged in were, low teaser rate loans and no income no document loans with complicated repayment terms which were never explained during these transactions. When the homeowners invariably fell behind in their mortgages and were foreclosed upon, they were unrepresented in this complex litigation. As the crisis progressed, homeowners facing foreclosure took

the form of individuals who lost their jobs due to the economic downturn and families who could no longer afford the original mortgage because of a decrease in household income – a divorce, survivors of a deceased borrower, the unexpected loss of rental income.

Fortunately, through the enactment of various state and federal regulations statutes and the implementation of certain programs like the Home Affordable Modification Program (“HAMP”) in 2009, we as advocates were given the tools to more effectively help homeowners. HAMP was created to establish loan modification qualification requirements to reduce mortgage payments to a level that would permit the borrower to remain in their home. Although the program had some limitations, it was a useful tool in helping borrowers keep their homes. In 2008, with the enactment of CPLR 3408, New York codified a borrower’s right to engage the banks in good faith settlement discussions in a mandated conference.

Due chiefly to these laws and regulations, the banks were not only required to engage borrowers in a transparent fashion, they were also liable for failure to act in accordance with these provisions. This was essential to leveling the playing field in the area of loss mitigation in order to provide homeowners with a meaningful process and an opportunity to save their homes. Since that time, we have seen a reversal of policies that were favorable to home retention.

We have also experienced a significant increase in the number of filings related to reverse mortgages. Some of those filings were based on inaccurate information about the borrower, stating that the property was vacant when in fact, it was occupied. **[Ex. 1: one of our client’s servicers charge a hefty surcharge of almost 4 mortgage payments on her statement for a foreclosure action that was YET to be filed. The statement claimed that this was an advance and that the homeowner was 3 months in arrears. We identified this egregious charge and were able to get it reversed.]**

Additionally, various lenders are requiring borrowers to pay significant sums as inducement for banks to approve loan modifications. Those amounts, though varying, range from one third to one half

of the borrowers' total arrears. For individuals who have been fighting for years in the courts to keep their home, this is impossible and disastrous. Additionally, more and more banks have refused to waive the restriction on extending the terms of their loan products.

Another challenging issue has been the current state of real estate prices in New York City, and Kings County in particular. Some lenders have justified denials of assistance for loss mitigation on the basis of equity in the home. However, in their analysis for a loan modification, they only include the outstanding principal balance and omit the accrued interest. As a result, the borrower will be deemed to have substantial equity, precluding approval for a loan modification, even though the borrower has satisfied the requisite gross monthly income threshold for affordability.

Inflated real estate prices in low income communities of color have led to predatory practices by investors. They prey on homeowner's vulnerabilities and fear of losing their homes. **[Ex. 2: we were able to reclaim title for a minority couple who had unwittingly transferred their property's title to an investor. They were steered to the investor by a for profit entity that was supposed to assist them in applying for a loan modification.]**

Despite these troubling signs, there is a misconception that the crisis is over. For those of us on the ground who have been doing this work since 2008, we recognize that the crisis is not over. According to the New Economy Project, in New York City's communities of color, the foreclosure crisis is far from over. Nine of the ten zip codes with the highest number of pre-foreclosure notices are neighborhoods of color [<https://www.neweconomynyc.org/2019/02/foreclosure-crisis-far-from-over/>]. Homeowners face new challenges and require the services of housing counselors and foreclosure prevention attorneys now more than ever.

Some have pointed to other indicators such as rising interest rates, high home prices, and the recently enacted tax law as harbingers of what's to come for homeowners in New York City as we are witnessing the highest levels of homes at risk for auction since 2009. According to the data cited,

Brooklyn and Queens primarily drove the city's 58 percent year-over-year increase, with 827 and 1,260 first-time foreclosures. [https://therealdeal.com/issues_articles/is-new-york-city-headed-for-another-foreclosure-crisis/]

In closing, we thank our elected officials for convening this hearing and for their unflagging commitment to our communities. You have shown your determination to meet this crisis head on and we thank you all for fighting alongside us for the preservation of our communities by restoring foreclosure funding. As you well know, access to competent housing counselors and legal representation is indispensable in putting Communities First in NYC and New York State. Thank you.